



Crl.O.P.No.24026 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2022

PRONOUNCED ON : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.24026 of 2022

S.Senthil @ Thadi Senthil

... Petitioner

/vs/

State rep. by
The Inspector of Police,
N-1 Royapuram Police Station,
Chennai.
(crime No.80 of 2022)

... Respondent

Prayer : This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records and set aside the order passed in Crl.M.P.No.3623 of 2022 in C.C.No.145 of 2022, dated 05.09.2022, passed by the Hon'ble Special Judge-I, Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner on statutory bail.

For Petitioner

... Mr. R.Vivekananthan

For Respondent

... Mr. E. Raj Thilak,
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to set aside the order passed by the learned Special Judge-I, Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner on statutory bail.

2. The facts of the case is that the respondent police registered a case against this petitioner/A1 and two others in Crime No.80 of 2022 for the offences punishable under Sections 8(c) r/w.20(b)(ii)(c), and 29(1) of the NDPS Act for having illegal possession of 112 kgs of Ganja on 30.01.2022. The petitioner/accused was arrested and remanded to judicial custody on 30.01.2022. Since he is in custody for more than 180 days, on the very next day (181th day) i.e., on 29.07.2022, the petitioner has filed a statutory bail application in Crl.M.P.No.3623 of 2022 before the Special Court seeking statutory bail for non filing of charge sheet within the statutory period, which was dismissed by the Special Court on the ground that charge sheet was filed on 29.07.2022 and the same was taken on file by the Special Judge in C.C.No.145 of 2022. Therefore, the Statutory bail



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petition under Section 167(2) Cr.P.C. was dismissed as not maintainable.

Now, it is under challenge.

3. The learned counsel appearing for the petitioner submitted that the statutory bail petition was filed on 29.07.2022 at 10.30.a.m., before the Special Court on the 181st day of arrest of the petitioner. Only, on 29.07.2022, the prosecution filed the final report, which is beyond the mandatory period of 180 days as prescribed under Section 167(2) Cr.P.C. (including the date of remand was computed). The date of remand, i.e. 30.01.2022, has to be included for computing the period. If the date of remand, i.e. on 30.01.2022 is included for computing the statutory period, the filing of final report on 29.07.2022 is beyond the statutory period and hence, the petitioner is entitled to get statutory bail on filing his bail application on 29.07.2022. The Trial Court dismissed his statutory bail petition as final report is filed within the statutory period and failed to consider the fact that the prosecution filed the final report beyond the statutory period of 180 days. The Trial Court has no power to interfere with the indefeasible right of the petitioner conferred under Section 167(2)



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Cr.P.C. The prosecution cannot defeat the enforcement of his indefeasible right by subsequently filing a final report. Thus pleaded to set aside the impugned order and enlarge the petitioner on bail.

4. To support his argument, the learned counsel placed reliance upon the judgments of the Apex Court in ***M.Ravindran /vs/ Intelligence Officer, Directorate of Revenue Intelligence [2021(2) SCC SC485]*** and ***Enforcement Directorate, Government of India /vs/ Kapil Wadhawan and another [2021 SCC Online SC 3136]*** and the order of this Court in ***Crl.O.P.No.14316 of 2021, dated 31.01.2022.***

5. The learned Additional Public Prosecutor appearing for the respondent justifying the impugned order of the Trial Court contending that the mandatory period of 180 days prescribed for filing of final report under Section 167(2) Cr.P.C is excluding the date of remand and if it is so, the final report was filed on the 180th day of the arrest of the petitioner, i.e., within the statutory period on 29.07.2022.



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6. The learned Additional Public Prosecutor to support his argument, relied upon the following judgments of the Hon'ble Supreme Court:-

- (i) C.A.No.2937 of 2000, dated 10.10.2000 [Tarun Prasad Chatterjee /vs/ Dinanath Sharma*
- (ii) State of M.P. /vs/ Rustam and others [1995 Supp (3) SCC 221]*
- (iii) Ravi Prakash Singh Alias Arvind Singh /vs/ State of Bihar [2015 (8) SCC 340]*
- (iv) Uday Mohanlal Acharya /vs/ State of Maharashtra [2001(5) SCC 453)*
- (v) M. Ravindran /vs/ Intelligence Officer, Directorate of Revenue Intelligence [2021 (2) SCC 485*
- (vi) Enforcement Directorate, Government of India /vs/ Kapil Wadhawan and another [2021 SCC Online SC 3136]*

7. He further submitted that in the case of *Ravi Prakash Singh Alias Arvind Singh /vs/ State of Bihar [2015 (8) SCC 340]* , the Hon'ble Supreme Court held that while computing the period under Section 167(2) of Cr.P.C., the day on which the accused was remanded to judicial custody has to be excluded and thus, justifying the impugned order and pleaded to dismiss the Criminal Original Petition.



8. I have considered the matter in the light of the submissions made by the learned counsel for both the parties.

9. It is not in dispute that the petitioner was remanded to judicial custody on 30.01.2022 and hence the mandatory period 180 days prescribed by filing the final report under Section 167(2) Cr.P.C was completed on 28.07.2022 if the date of remand is included. In contrary, if excluding the date of remand it was completed on 29.07.2022.

10. The main contention of the learned counsel for the petitioner is that there is divergence of opinion as to how the period is to be computed. The decision of the Hon'ble Supreme Court relied on by the prosecution in the ***Raviprakash Singh @ Aravind Singh (supra)*** is not helpful to decide the case for the reason that State Criminal Rules of Practice in Rule 6(8) stated how the period is to be computed for concluding the statutory period. As per the rule, the date of remand must be included. It is accepted by Our Court in Crl.O.P.No.14316 of 2021.



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11. Further, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Enforcement Directorate, Government of India /vs/ Kapil Wadhawan and another [2021 SCC Online SC 3136]***. In that case, because of the conflicting view on the proposition of law for grant of default bail, referred the issue to Larger Bench and until the Larger Bench determines the issue, the Court across the country may take decision on the issue depending upon which judgment is brought to the Court's notice or on the Courts own understanding of the law, covering default bail under Section 167(2)(a) II Cr.P.C.

12. In the present case, the issue is how to compute the period of completion of investigation, i.e., whether the date of remand to be excluded or included. Even though the Apex Court in ***Raviprakash Singh @ Aravind Singh(supra)*** held that while computing the period under Section 167(2) Cr.P.C, the day on which, the accused was remanded to Judicial Custody has to be excluded. However, our State Criminal Rules of Practice in Rule 6(8) mandated while calculating the period the date of remand has to be included. Rule 6(8) reads as follows :



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"6(8) In computing the period of 15 days mentioned in Sub Section (2) of Section 167 or the first proviso to sub-section (2) of Section 309 of the Code , both the day on which the order of remand is made and the day on which the accused is ordered to be produced before the Court, should be included in Judicial Form Nos.14 and 25, respectively." This Court which has been stated that the date of remand is to be included while calculating the period of remand under Section 167(2) of Cr.P.C."

13. In the above circumstances, because of the conflicting view on the proposition of law for grant of default bail as observed by the Hon'ble Supreme Court in ***Enforcement Directorate, Government of India (supra)***, until the larger Bench settled the law, we may follow the Criminal Rules of Practice. Hence, by applying the Criminal Rules of Practice in Rule 6(8) if the date of remand, i.e.30.01.2022, is included for calculation for computing the period of calculation for determining the entitlement to default bail, the order of the Trial Court is against the Law and unsustainable and liable to be set aside.



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14. In view of the principle laid down by the Hon'ble Supreme Court in the case of ***M.Ravindran (supra)***, the petitioner is entitled for default bail notwithstanding of subsequent filing of the charge sheet and hence, the petitioner is entitled for statutory bail .

15. Accordingly, Statutory Bail is granted to the petitioner and the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.25,000/- (rupees Twenty Five Thousand only) with two sureties for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the I Additional Special Court for Exclusive Trial under NDPS Act at Chennai and on further condition that :

(a) the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioner shall not tamper with evidence or witness either during investigation or trial;



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(c)the petitioner to appear before the trial Court on all hearing dates.

(d)the petitioner shall not abscond either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions has been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

16. With the above directions, this Criminal Original Petition is allowed.

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mrp

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Internet : Yes/no

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To

1. The Special Judge,
I Additional Special Court for Exclusive Trial of Cases under NDPS Act,
Chennai.
2. The Inspector of Police,
N-1 Royapuram Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM ,J.

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Pre-Delivery Order
in
Crl.O.P.No.24026 of 2022

31.10.2022